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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 271. October Term, 1930.

WALTER O. WOODS, as Treasurer of the United States,
Petitioner,

against

THE CHEMICAL FOUNDATION, INC., and E. I. DUPONT DENEMOURS & CO.,
Respondents.

No. 272. October Term, 1930.

HOWARD SUTHERLAND, as Alien Property Custodian,
Petitioner,

against

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
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DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

No. 274. October Term, 1930.

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Petitioner,

against

BADISCHE ANILIN & SODA-FABRIK, E. I. DUPONT DENEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,
Respondents.

BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT, THE CHEMICAL FOUNDATION, INC., IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI.

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Facts and Opinions Below.

In the interest of brevity, the facts are not re-stated. They appear in the opinions of the Courts below (District Court (R. 176), 29 Fed. (2d) 597; Circuit Court of Appeals (R. 251), 39 Fed. (2d) 366), and in the brief filed by this Respondent in opposition to the Petition for writs of certiorari filed by the German Petitioners (Respondents herein) Farbwerke vormals Meister Lucius & Bruning, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and Badische Anilin & Soda Fabrik (Docket Nos. 179, 180, 181 and 182, October Term).

Statement.

The Petitioners, the Treasurer of the United States and the Alien Property Custodian, pray (Petition, pp. 4, 5) that certiorari be granted in the above-entitled suits *only in event* that certiorari is granted as prayed for by the German Petitioners in Docket Nos. 179, 180, 181 and 182. They say, furthermore (Petition, p. 4), that "It is a matter of indifference" to them "whether the petition of the German respondents is granted or not."

This Respondent, The Chemical Foundation, Inc., has fully replied, by its brief filed in Docket Nos. 179, 180, 181 and 182, to the arguments advanced by the German Petitioners in support of their Petition in those causes, and has submitted that no reason has been stated by them which should influence this Court to conclude that the unanimous decisions of the Courts below should be reviewed. The

avowal by the Treasurer and the Custodian of the dependence of their Petition upon the granting of that of the Germans would appear to make unnecessary, therefore, the filing of any brief by this Respondent in answer to the Petition of the Treasurer and the Custodian, save to avoid any inference of acquiescence in such Petition from a failure to reply thereto. The Foundation opposes the granting of the Petition of the Treasurer and the Custodian, and submits that the Petition itself suggests a most persuasive reason why it should not be granted, in the following statements taken therefrom (p. 3):

> "These causes have been thoroughly considered by two courts, both of which have reached the same conclusions. The causes of action arise under a war-time statute which has no general application in time of peace and upon a peculiar state of facts which will not likely arise in the future except as to certain related cases which fall within the same category as these four suits."

Further Reasons for Denying the Writs.

(a) *As to the Treasurer of the United States.*

This official was made a defendant because of statutory requirement (*Trading with the Enemy Act*, Sec. 10(f), Oct. 6, 1917, c. 106, 40 Stat. 420). The recovery sought by the bills of complaint is primarily of a reasonable royalty for the use and enjoyment of the patented inventions. The only interest of the Treasurer is that of a stake-holder, and arises from the circumstance that the funds in his hands constitute, by and in the terms of the statute (Sec. 10(d), *id.*), "a trust fund for the said licensee and for the owner of the said patent," to which resort may be had for the payment, *pro tanto*, of any such reasonable royalty as may be awarded. The statute further provides for the disposition of these funds by the Treasurer *as the Court shall ultimately direct* (Sec. 10(f), *id.*).

(b) *As to the Alien Property Custodian.*

This official did not institute suit within the period permitted by law (Sec. 10(f), *id.*), namely "after the end of the war and until the expiration of one year thereafter." He moved to be substituted as party plaintiff in lieu of the German Plaintiffs (Respondents herein), but it was held that he could not thus avoid the bar of the statute.

At best, however, the granting of his motions (the denial of which he now seeks to have reversed), would have been a fruitless thing. He asserted, in making them (R. pp. 66, 76, 87), that by his seizures all rights to recover royalties for the use of the licensed patents had been acquired by him. Yet he had theretofore ceased to own these rights when he assigned them to this Respondent (R. pp. 106-111, 118-125),* by assignments which this Court has already considered and sustained (*United States* v. *Chemical Foundation*, 272 U. S. 1).

Respectfully submitted,

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JAMES GARRETSON,
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The Chemical Foundation, Inc.

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* NOTE: See especially confirmatory assignment of March 1, 1921, wherein the Custodian confirmed and ratified "the sale and assignment of" and did thereby (R. 123-124)

"* * * sell, assign, transfer and set over to said The Chemical Foundation (Inc.), all choses in action, rights, interests, and benefits under agreements and rights and claims of every character and description growing out of and appurtenant to the ownership of said property; including (but not thereby limiting the generality of the foregoing) rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, copyrights, and trade-marks, *and all right, title, and interest in and to the choses in action and the funds referred to in section 10, sub-section (f) of the 'trading with the enemy act', as amended, acquired by the Alien Property Custodian by virtue of the seizures* by which there were seized patents, copyrights, or trade-marks, under which a license had theretofore been granted in accordance with the provisions of section 10, sub-section (c) of said act, as amended * * *." (Italics ours.)